



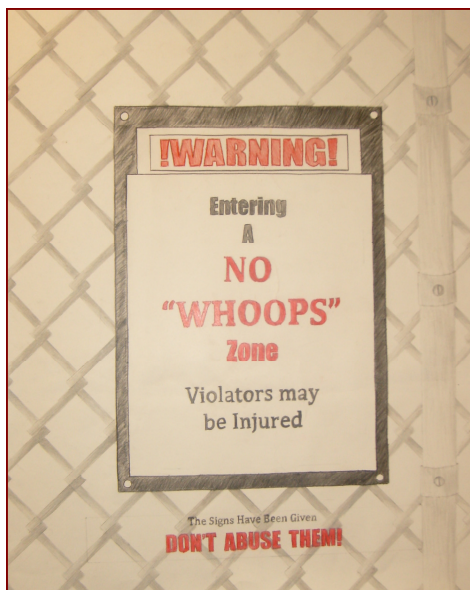
ON-THE-JOB

Sherrie M. Hayashi, Editor-in-Chief

Robyn B. Barkdull, Editor

Contest Winners Agree - Safety Does Pay!

Kaysville Jr. High School is no stranger to doing well in the Labor Commission's Workplace Safety Poster Contest. Over the 12 years the contest has been in existence, Kaysville Jr. High has had top winners nearly every year. This year, they boast the Grand Prize Winner and Sheldon Packard received \$500 for his winning entry. The contest also awards matching amounts to any schools who have top winners, as well as an entry prize, which enabled Kaysville's art teacher, Melanie Reeves, to accept a check for the school amounting to \$800.



Grand Prize Winner

2009 Workplace Safety Poster Contest

Sheldon Packard

**Kaysville Jr. High
School**

Katie Davis, a student at Juab Middle School won \$300 for having this year's 1st Runner-up. 2nd Runner-up was awarded to Max Larsen from Hillside Middle School, and Amber Wise of Central Davis rounded out the \$300 winners with her 3rd Runner-up entry.

The poster contest, in its 12th year, is part of the Labor Commission's ongoing outreach campaign to "Take Safety Seriously". It is open to all middle and junior high schools across Utah, both private and public. This year's winners were chosen from nearly 1,100 entries submitted by 33 different middle and junior high schools. Every school which enters the contest is given a \$300 participation award.

Because the workplace impacts all people and families in Utah, the Utah State Legislature appropriated funds
...See Contest on page 2

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2009 POSTER CONTEST

generated from a percentage of the workers' compensation premium to the Labor Commission to be used in informing citizens of the need for workplace safety. As students in the junior high and middle schools participate in the technology/life/careers "TLC" project, it is important to incorporate workplace safety into this training by teaching and stressing safety.

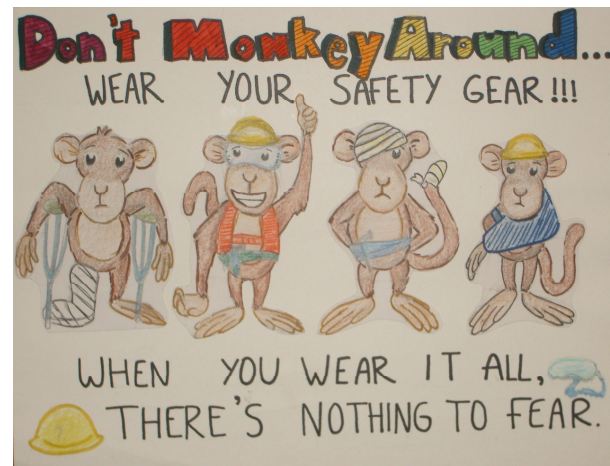
This contest has generated great interest in workplace safety and those schools who have participated in the past have found it both rewarding and educational. The workplace safety posters can either be done through the art department, or integrated into the

TLC curriculum serving as a motivational learning tool.

The Honorable Mention award winners each received \$200 for them and their schools. They included: Elise Gozman of Ephraim Middle School; Christian Madsen of Orion Jr. High; Gavin Anderson and Jameson Blossil from Lakeridge Jr. High; Sara

Lorscheider from Millcreek Jr. High; Ambrosia Esparza of Northwest Middle School; Taylor Cooper from Timerberline Middle School; and Randy Ellett who attends Wayne Middle School.

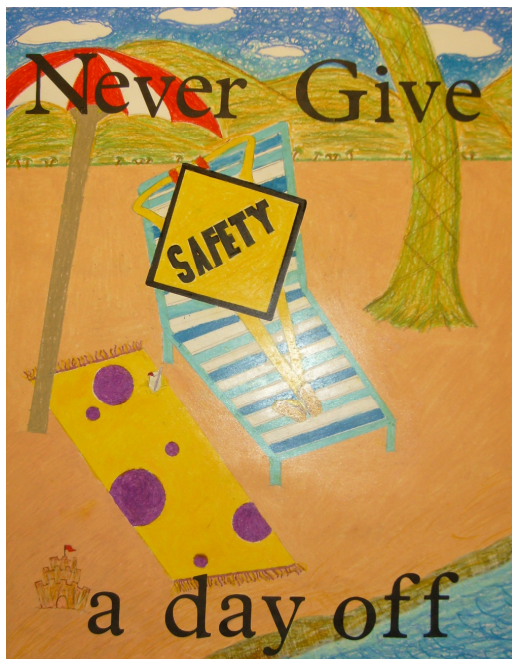
These top 12 winners of the contest will have their



Katie Davis
Juab Middle School
1st Runner-Up

entries featured in the Labor Commission's Workplace Safety calendar for 2010. The Commission distributes over 35,000 of the safety calendars throughout the state, and considers it a very effective tool for generating awareness to the public of the need for safety in the workplace.

Anyone interested in details of the contest for next year should contact Robyn Barkdull at the Labor Commission at (801) 530-6815 or by email at rbarkdull@utah.gov



Max Larsen
Hillside Intermediate School
2nd Runner-up



Amber Wise
Central Davis Jr. High School
3rd Runner-up

Futura Industries Inc. Receives SHARP Renewal

By Jerry Parkstone, UOSH Consultation



From left to right: Kiley Cox (Safety and Quality Manager), Kirk March (Utah Labor Commission OSHA Consultant), Sherrie M. Hayashi (Utah Labor Commissioner), Susan Johnson (President, Futura Industries Corporation)

On June 24, 2009, Futura Industries of Clearfield Utah, was presented with a renewal of their SHARP status for a period of three years. Futura received their initial SHARP status in 2006, and has continued to be a leader in workplace safety in the state of Utah. So far, in 2009, Futura has had no reportable injuries, and are well below industry average rates of illness and injuries.

The Safety and Health Achievement Recognition Program (SHARP) rewards small employers who operate an exemplary safety and health management system. Acceptance in SHARP distinguishes a business as being a member of a very select group of businesses that are models of workplace safety and health. The state of Utah has five companies that have received SHARP status. Kirk March (Utah OSHA Consultant) spent many hours with the employees and management of Futura to receive their SHARP renewal, and praised Futura for the way they have empowered their employees to be a major contributor in developing safety procedures.

Futura has received numerous awards including the Utah Department of Workforce Services “Utah’s Best Places to Work: 2009 Work/Life Award” for the 10th consecutive year. Futura Industries is the first and only company that has won the award ten years consecutively and has been given the elite “Legacy” award.

During the presentation, of their renewal, the Utah Labor Commissioner, Sherrie M. Hayashi, commented on Futura’s family friendly, safety conscience atmosphere, and noted that the Utah Labor Commission looks at them as one of the truly great companies in Utah.

Congratulations to Brent Lloyd (Owner) Susan Johnson (President), Kiley Cox (Safety and Quality Manager), Jared Bringhurst (Operations Manager), and their 195 employees for making Futura Industries Corporation one of Utah’s leading small businesses, and an exceptionally safe place to work.

Utah Adopts 3rd Hike in Federal Minimum Wage Law

The Utah Labor Commission adopted the new federal minimum wage law which became effective July 24, 2009.

The federal and Utah minimum wage rate was also increased in 2007 for the first time in 10 years. In July of 2007, the rate went from \$5.15 an hour to \$5.85. Then, on July 24, 2008, the second of three scheduled 70 cent hikes became effective raising Utah's minimum wage to \$6.55 per hour. Effective July 24, 2009, the rate will move to the third scheduled increase to a rate of \$7.25 per hour.

"Utah statute requires the Labor Commission to review the state minimum wage law whenever a change occurs in the federal minimum wage law", said Commissioner Sherrie Hayashi. "Because of this mandate and the federal minimum wage law, the Commission promulgated changes to the Utah minimum wage rules through the state administrative rule-making process in 2007. Utah will continue following the pay scale set forth by the federal legislation."



The minimum wage rate changes are summarized in the chart below:

MINIMUM WAGE RATE INCREASES			
FEDERAL		UTAH	
Rate	Effective Date	Rate	Effective Date
\$5.85 / Hour	July 24, 2007	\$5.85 / Hour	Sept. 8, 2007
\$6.55 / Hour	July 24, 2008	\$6.55 / Hour	July 24, 2008
\$7.25 / Hour	July 24, 2009	\$7.25 / Hour	July 24, 2009

The new federal and Utah minimum wage laws leave unaffected the cash wage obligation of \$2.13 an hour that is owed to tipped employees and the training wage rate of \$4.25 an hour for minor employees during their first 90 days of employment with a single employer. A "tipped employee" is one who customarily and regularly receives tips, who is not a chef, janitor or dishwasher, and who receives at least \$30.00 a month in tips. The new Utah minimum wage rates will apply to a tipped employee's wages where the employer is permitted to credit the employee's tips toward the effective minimum wage rate after paying the employee the cash wage obligation of \$2.13 an hour. If the cash wage obligation, plus tips, falls short of the minimum wage level over a pay period, the employer must pay the difference.

Employers may choose to pay more than \$4.25 an hour to minor employees during their first 90 days of employment, but after the 90 days, minor employees are entitled to be paid wages at the new minimum wage rates.

Boiler, Elevator & Coal Mine Safety Division

By Ami Johnston, Business Analyst



The Division of Boiler, Elevator and Coal Mine Safety is a division within the Utah Labor Commission. The Division is charged with the task of enforcing state laws as they pertain to boilers, pressure vessels, elevators, escalators, coal miner certification and as of the 2008 Legislative Session, coal mine safety. They strive to ensure fairness for the state of Utah's taxpayers and regulated industries, and provide businesses assistance in meeting the requirements of the codes the Division enforces.

Over the past year, the Division has inspected 451 new elevators, 867 new boilers, and 1704 new pressure vessels. The Miner Certification Program has administered 401 exams and each of the eight (8) coal mines in the state of Utah has been visited multiple times by the Director of the Office of Coal Mine Safety. In total, the Division performed over 22,000 new and routine inspections and issued in excess of 15,500 operating permits! The Division is also responsible for the inspection of over 37,000 pressure vessels as part of the Owner/User inspection program.

The Division has only 15 full time employees. However, in order to accomplish the task of inspecting the state's boilers, elevators and pressure vessels as well as supplement operating costs, the Division is a successful example of the state and private sector working together. In addition to those employed directly, the Division is responsible for and provides support to:

19 Deputy Insurance Inspectors (*An inspector employed by an insurance company that underwrites a boiler and pressure vessel policy. Their inspections are at no cost to*

the state but the inspection in turn generates revenue back to the state.)

30 Owner/User Inspectors (*An owner or user of pressure vessels who maintains a regularly established inspection department, whose organization and inspection procedures meet the requirements of the Division. This program is designed for businesses with large numbers of pressure vessels and, when utilized the inspection/permit fee is waived by the state. This program saves the owner/user businesses vast amounts of money and also meets the state's requirements of pressure vessel inspection, insuring safety while eliminating the need for additional state inspectors.*)

18 Shop Only Inspectors (*An inspector who inspects newly constructed and repaired pressure retaining items.*)

All inspectors, whether directly employed by or deputized by the Division must be audited, tested and monitored quarterly. All inspectors generate revenue from fees paid by the businesses for their inspections, with the exception of the Office of Coal Mine Safety. This revenue is then paid to the State's General Fund to cover the operating costs of the Division. The Miner Certification Program charges a fee for each exam taken and that fee is applied back to the program as dedicated credits to be used for operating costs.

The Coal Miner Certification Office and Office of Coal Mine Safety (OCMS) are located in our satellite office in Eastern Utah. The duties charged to the Miner Certification Office are to administer five exams that are safety-

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orientated in nature and specific to the coal mining industry. The OCMS was created as a direct result of the recommendations of the Utah Coal Mine Safety Commission in response to the Crandall Canyon Coal Mine disaster. The duties charged to the OCMS are to visit each coal mine whenever necessary in an effort to maximize the level of safety in all of Utah's Coal Mines.

The Division relies on the private sector for much more than just safety inspections and revenue. We have two advisory boards, one council and one panel: The Boiler/Pressure Vessel Advisory Board; Elevator Advisory Board; Mine Safety Technical Advisory Council, mandated by law to have 18 members; and the Miner Certification Panel, mandated by law to have at least 8 members. Each group consists of members that represent all fields affected. These panel/council members, along with advisory board members, help guide us through these ever changing times within the state.

The Division implemented a web based inspection reporting program; the program has been very successful; allowing the inspectors to focus more on the safety inspections and decreasing the amount of office time as well as time spent writing permits. The system has been a major contributor in reducing the amount of boilers and pressure vessels that are overdue for inspection. In addition, each of the inspectors is assigned a vehicle which functions as a

virtual office. Inspectors each have a cellular phone and a laptop computer fitted with a wireless "air card" allowing connection to the internet, and therefore our program, from anywhere they can receive a signal. Inspectors communicate with the office each morning via email reporting where they will be working that day. We have installed power inverters in each vehicle allowing the inspectors to plug in to their laptops which are now mounted in their cars; similar to the method used by Utah Highway Patrol officers, thus completing the inspector's disconnection from the office.

Doing more with less has become a way of life for all of us these days and the employees of the Division of Boiler, Elevator and Coal Mine Safety are no exception. They are some of the most dedicated and hard-working people in the state of Utah. Each is committed to making Utah a safer place to work and live. So even though budgets have been cut and resources are stretched thin, you can count on them to be behind the scenes every day - ensuring our safety.



Appellate Decisions

During the last three months, the Utah Court of Appeals has issued only one workers' compensation decision. However, the Utah Supreme Court has issued two important decisions affecting Utah's workers' compensation system. Each of these appellate decisions can be read in full at www.utcourts.gov/courts/appell/.

***Merrill v. Labor Commission, et al.,* (Utah Supreme Court, 2009 UT 26, issued April 24, 2009).** The Utah Supreme Court held that a provision in § 34A-2-413(5) of the Utah Workers' Compensation Act which partially offsets social security retirement benefits against workers' compensation permanent total disability bene-



fits is an unconstitutional violation of the "uniform operation of the law" guarantee in Utah's Constitution. In summary, the Court concluded that § 413(5)'s classification of injured workers based on whether they qualified for social security retirement benefits was unreasonable, and that no reasonable relationship existed between that classification and the objectives of the Utah Workers' Compensation Act. The Court specifically noted that retirement benefits under the Social Security system are not "wage replacement" benefits, but are an old-age pension. In contrast, permanent total disability compensation under the workers' compensation system is a

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wage replacement benefit. The Court found it irrational to offset the one against the other.

This ruling will have a significant financial impact on workers' compensation stakeholders, particularly if it is applied retroactively. Some of the parties in Merrill have asked the Court to address whether its ruling is prospective only, or should be given retroactive effect. The Court has not yet acted on that request.

LPI Services v. McGee and Labor Commission, (Utah Supreme Court, 2009 UT 41, issued July 21, 2009). In a case involving a claim for permanent total disability compensation, LPI argued that the Labor Commission's rule 612-1-10.D.1, which sets wage standards that must be met before other work will be considered "reasonably available" to an injured worker, went beyond the requirements of § 413(1)(c)(iv) of the Act.

The Utah Court of Appeals had previously concluded that § 413(1)(c)(iv) of the Act implicitly granted the Commission discretion to define whether work is "reasonably available" to an injured worker. The Court of Appeals then upheld the Commission's wage standards in rule 612-1-10.D.1 as a reasonable exercise of its discretion. At LPI's request, the Utah Supreme Court agreed to review the Court of Appeals' decision.

The Supreme Court has now affirmed the Court of Appeals' decision. Specifically, the Supreme Court

concluded that the Utah Legislature "granted discretion to the Commission to determine what constitutes reasonable available work when evaluating whether a worker is permanently and totally disabled." The Supreme Court further concluded that the Commission did not abuse that discretion in adopting rule 612-1-20.D.1.

Prichard v. Labor Commission and K-Mart, (unpublished memorandum decision of the Utah Court of Appeals, issued July 16, 2009, 2009 UT App 189.)

Mr. Prichard injured his back working for K-Mart. After receiving medical benefits and some compensation for his injury, Mr. Prichard filed a claim for permanent total disability compensation. After considering evidence regarding the nature of Prichard's limitations and remaining abilities, the Labor Commission found Prichard capable of performing other work that was reasonably available to him. On that basis, the Commission denied Mr. Prichard's claim for permanent total disability compensation. Mr. Prichard appealed the denial to the Utah Court of Appeals.

The Court of Appeals affirmed the Commission's decision, finding the evidence supporting the decision to be sufficient, and also concluding that the Commission's decision had adequately assessed the availability of other work that Prichard could perform.

The Rules Corner

Pursuant to authority granted by the Utah Legislature, the Commission has recently adopted or is considering the following substantive rules. If you have questions or concerns about any of these rules, please call the Labor Commission at 801-530-6953.



R602-7 Adjudication	Employment Discrimination. Establishes procedures for adjudicating employment discrimination complaints.	Effective 5/22/09
R602-8 Adjudication	Occupational Safety & Health. Establishes procedures for adjudicating challenges to occupational safety and health citations.	Effective 5/22/09

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R602-2.3 Adjudication	Compensation for Medical Panelists. Increases compensation rate for medical panel members by \$25 per hour.	This proposed rule has been approved by Workers' Compensation Advisory Council and published in <i>Utah Bulletin</i> . It is scheduled for public hearing on August 12, 2009, and can be made effective 8/21/09
R610-3 UALD	Payment of Wages. Would allow payment of wages by use of "paycards."	This proposed rule has been approved by the Antidiscrimination & Labor Advisory Council and published in <i>Utah Bulletin</i> . Was also discussed at public hearing on 5/19/09. Although could be made effective 8/21/09, Commission has placed on hold to allow further discussions with interested parties.
R612-2-4 Industrial Accidents	Regulation of Medical Practitioner Fees. As part of the Commission's regulation of medical fees, replaces the 2008 version of the RBRVS (Resource Based Relative Value Scale) with the 2009 edition. This change is intended to take effect 12/1/09.	Approved by Workers' Compensation Advisory Council; will be discussed at public hearing on 8/12/09.

Request Form

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